

ENTERED

August 02, 2017

David J. Bradley, Clerk

Lauger Companies, Inc.,

Plaintiff,

versus

Mid-Continent Casualty Company,

Defendant.

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Civil Action V-16-11

Opinion on Summary Judgment

1. *Introduction.*

A company sold defective concrete to a builder. The builder seeks to recover damages caused by the concrete's failure in the building from the seller's insurer. The builder will recover.

2. *Background.*

M.W. Rentals & Services, Inc., hired Lauger Companies to build a warehouse in Victoria, Texas, to store heavy construction equipment.

In October 2012, Lauger bought concrete for the foundation from Cross Roads Industries, Inc. Lauger specified that the concrete would have a strength of 3,000 pounds per square inch. Lauger poured the concrete for the foundation and a sample. While Lauger waited twenty-eight days for the concrete to cure, it continued erecting the steel frame of the warehouse.

Lauger tested the sample three times; each time it supported less than 3,000 psi. The foundation flaked as it cured. Lauger hired engineers from T.S.I. Laboratories to take core samples from the foundation. Of the 22 core samples, half were less than 3,000 psi. Lauger commissioned a petrographic analysis that determined that the concrete had 12% air content; concrete with a strength of 3,000 psi requires 4% air content.

The warehouse owner asked Lauger to remove and replace the defective concrete. Lauger complied. Lauger sued Cross Roads for the costs from the

defective concrete and was awarded \$162,009.14. Cross Roads has since closed without having paid the judgment.

Mid-Continent Casualty Company insured Cross Roads. Lauger asserts that it gets Cross Roads' benefits under the Mid-Continent insurance policy.

3. *Coverage.*

Cross Roads purchased a commercial general-liability policy from Mid-Continent. The policy covered Cross Roads' liability for property damage from October of 2011, through October of 2013. Property damage is defined by the policy as physical injury to or loss of the use of property.

The concrete was defective when it was poured. Pouring defective concrete is not a covered physical injury. The concrete was not destroyed, but it was removed because it was weak. The policy does not cover damages from demolishing the foundation and pouring the new foundation.¹

Pouring the defective concrete damaged the non-concrete elements of the foundation. The foundation included wooden forms, reinforcing bar, Visqueen, sub-slab fill, and angle iron that would have secured the structure to the foundation. As a consequence of their having been encased in bad concrete, their utility was destroyed. These elements were repurchased and reinstalled for the new foundation. The Mid-Continent policy covers these parts because they could not be repaired; they were consumed by the faulty concrete.

¹ U.S. Metals Inc., v. Liberty Mutual Group, Inc., 490 S.W.3d 20, 27 (Tex. 2015).

4. *Damages.*

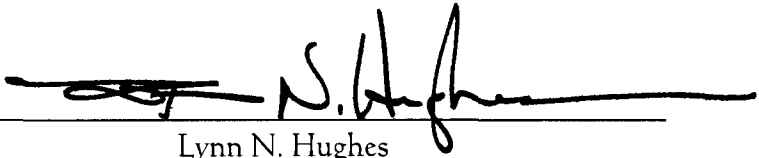
Mid-Continent is obliged to pay for these damages caused by pouring the defective concrete.

1. Labor to take down steel frame	\$ 6,536.87
2. Redo sub-slab fill	\$11,800.00
3. Replace galvanized angle at catch basin	\$ 1,224.31
4. Replace anchor bolts	\$ 1,612.63
5. Labor for non-concrete work	\$37,012.50
6. Replace rebar	\$11,774.53
7. Concrete-cutting saw blade	\$ 296.51
8. Visqueen	\$ 590.59
9. Fiber expansion board	\$ 218.02
10. Rezall Cure	\$ 113.66
11. Electrical	\$ 4,111.59
12. Dumpster	\$ 509.81
13. Sanitary Toilet	\$ 503.38
14. Fuel	\$ 248.12
15. Plumbing	\$ 2,100.00
Total	\$78,652.52

5. *Conclusion.*

Lauger Companies, Inc., will take \$78,652.52 from Mid-Continent Casualty Company.

Signed on August 2, 2017, at Houston, Texas.



Lynn N. Hughes
United States District Judge